Supreme Court of the United States

OCTOBER TERM, 1948

No. 461.

ANIBAL MONAGAS Y DE LA ROSA, *et al.*, HEIRS, etc., *et al.*,
Petitioners

v.

NEFTALI VIDAL-GARRASTAZU,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT AND BRIEF IN SUPPORT THEREOF

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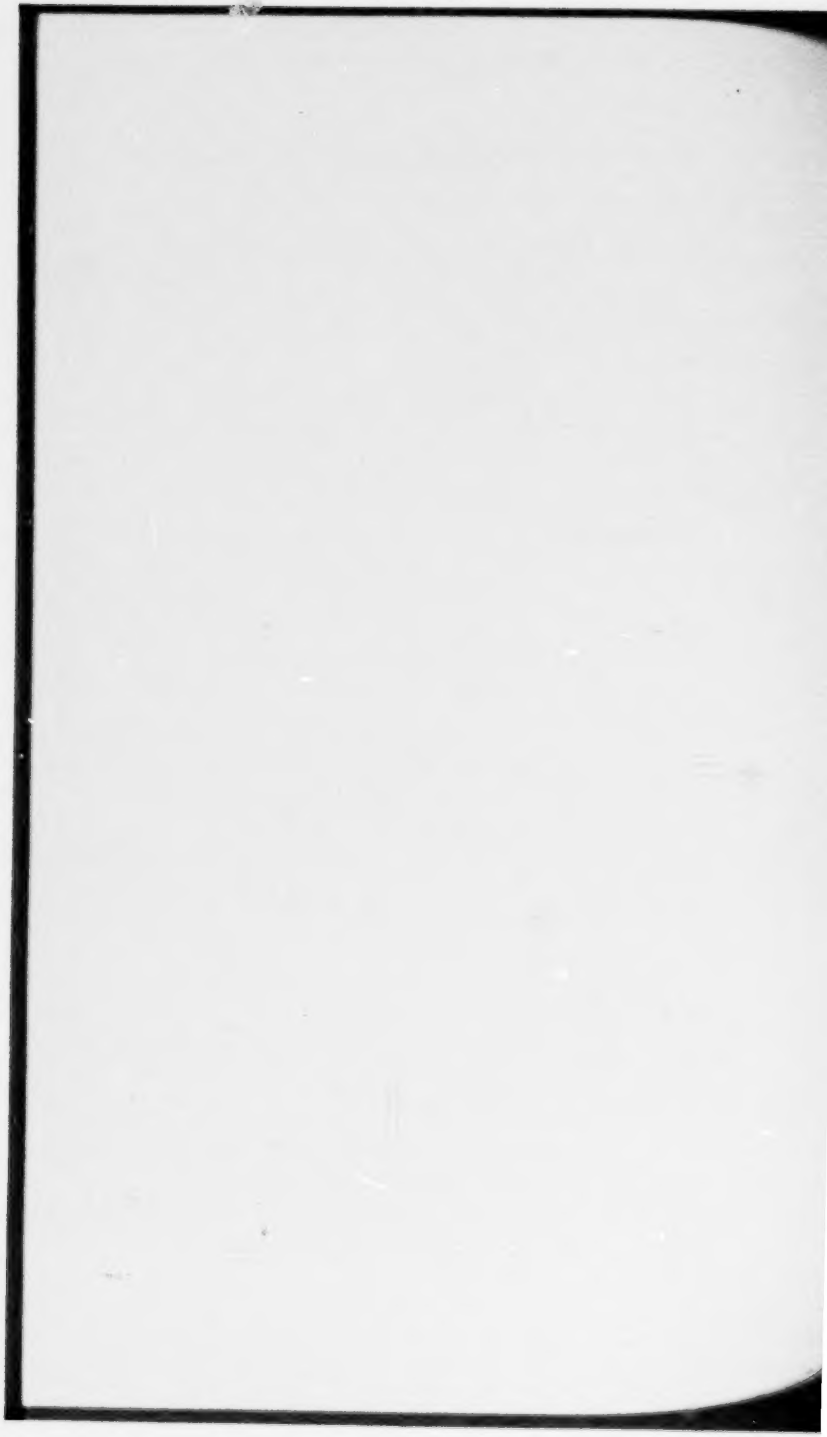

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v.

NEFTALI VIDAL-GARRASTAZU,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE U. S. COURT OF APPEALS, FIRST CIRCUIT

To the Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Petitioners Aníbal, Rebecca, and Eva Monagas de la Rosa, and Jorge, Giselda and Diego García-Monagas, as heirs duly substituted below in lieu of Juan A. Monagas, deceased (Supp. R. 565), pray for a writ of certiorari to review a judgment of the Court of Appeals for the First Circuit, entered October 4, 1948 (Supp. R. 565).[1]

[1] The printed record used by the Court of Appeals below will be designated, "(R.)"; and the additional printed matter showing subsequent proceedings in that Court including its opinion and judgment, will be referred to as "(Supp. R.)."

Jurisdiction

The jurisdiction of this Honorable Court is invoked under *Section 1254 of the new Title 28, United States Code Judiciary and Judicial Procedure, effective September 1, 1948,* providing that cases in the courts of appeal may be reviewed by writ of certiorari granted upon the petition of any party to any civil case (see also 43 Statutes 938, 28 U. S. C. A. 347).

The judgment of the Court of Appeals for the First Circuit was entered October 4, 1948 (Supp. R. 565), and a rehearing denied November 19, 1948 (Supp. R. 566). The time within which to apply for a writ of certiorari to this Court will expire on February 18, 1948 (§ 2101(c), new Title 28, United States Code Judiciary and Judicial Procedure, effective September 1, 1948).

Statement of the Case

Upon February 9, 1905, a three-partner agricultural firm was organized by Juan A. Monagas, José Arturo Monagas and Ramiro Vidal Martínez, respondent's father, to operate under the firm name of *Monagas & Vidal,* wherein the said members were to share equally (R. 75 bot.—76).

Ramiro Vidal Martínez, respondent's ancestor and former member of *Monagas & Vidal,* died on September 27, 1921 (R. 76 mid., 176 top, 478 mid.). But three years prior to his decease, i.e., upon 27 September 1918, an action No. 6889 was started in the district court of Mayaguez, Puerto Rico (R. 430-453), by José Mora claiming the amount of a promissory note executed by said Ramiro Vidal Martínez (R. 430). In this suit judgment was rendered against Vidal Martínez, dated February 4, 1919, which was duly notified to him (R. 436). At the execution

sale in No. 6889, Ramón E. Beauchamp acquired, and he later conveyed for value to Juan A. Monagas, petitioners' ancestor, all title and interest of Ramiro Vidal and his heirs in *Belvedere Farm* (R. 249, 256 top, 448-449). Monagas bought from Beauchamp for a cash price of $1,602 (R. 258 mid.), subject to a prior encumbrance on the lands of $41,480 (R. 258 top, 112 mid.).[2] This transfer was spread upon the land Registry books (R. 260). Respondent and his mother, known as Vidal's heirs, upon July 16, 1923 (R. 452 mid.), *voluntarily and generally appeared "by substitution"* in No. 6889, through two motions (R. 449-452; R. 452 bot.). Respondent and his mother attempted to set aside their substitution in that case in lieu of their predecessor Ramiro Vidal Martínez, as well as all subsequent proceedings leading to the execution sale. But Vidal's heirs' appearance was not limited to challenging the court's jurisdiction on the subject-matter or over their persons. They further sought relief on the two motions' supposed merits. Respondent's first motion was predicated on alleged *violation of certain provisions of the local Code of Civil Procedure* (R. 451).[3]

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[2] In Puerto Rico, the levy of an attachment is subject to prior encumbrances or credits. *La Sociedad etc.* v. *Rossy*, 17 P. R. R. 77; *Banco de Puerto Rico* v. *Solá e Hijos*, 26 P. R. R. 57; *Bank of Nova Scotia* v. *Benítez*, 52 P. R. R. 681, syll. 2, 686 mid.

[3] Thus, the insular supreme court's holding, as affirmed by the Court of Appeals below, that supposed violations of certain provisions of the local Code of Civil Procedure (R. 451), as allegedly depriving the Mayaguez court of jurisdiction in the execution proceedings had in No. 6889, *could be reasserted and considered by collateral attack in the present case, is in direct conflict or sheer inconsistency with local law and with at least an important, applicable decision of this United States Supreme Court,* in *Santiago* v. *Nogueras* (Puerto Rican case), 53 L. ed. 989, 992, 214 U. S. 260, where this Hon. Court categorically decided: *"Whether or not the * * * court * * * lost jurisdiction of a cause and of the parties because, in the course of its proceedings, it disregarded certain provisions of the Code of Civil Procedure which were binding upon it, is a question which cannot be raised by collateral attack on its judgment."*

His second motion went so far as to invoke the court's action on questions such as, for instance, the issuance of a cautionary order for the Registry of Property (R. 452 bot.). *Vidal's heirs thus submitted generally to the Mayaguez district court's jurisdiction in said execution proceedings in No. 6889.* Respondent and his mother *did not even take an appeal from the order directing issuance of execution* or attachment in that case.[4] In consequence, the question of the Mayaguez court's jurisdiction to order execution and the levy of attachment in No. 6889, *became res judicata,* binding on parties and privies.[5] Moreover, the validity of execution proceedings in No. 6889 was *duly ratified* through subsequent actions No. 10,416 and 783, as will be hereinafter shown.

In 1924, the Monagas family, petitioners, instituted a suit in the district court of Mayaguez, No. 10,416 (R. 453-

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[4] The *res judicata* rule applies also to one who has appeared specially and moved to dismiss for want of jurisdiction. *Baldwin* v. *Iowa State Traveling Men's Asso.*, 75 L. ed. at page 1246, col. 2 top, 283 U. S. 524.

[5] The insular supreme court's ruling in No. 6889, as affirmed by the Court of Appeals, *is also obviously inconsistent with the fundamental principle,* repeatedly upheld by this highest Court of the Nation, *that res judicata also applies to jurisdictional questions open or decided, whether expressly or tacitly, in prior litigations. Baldwin* v. *Iowa Traveling Men's Asso.*, 75 L. ed. 1244, 283 U. S. 522, 51 S. Ct. 517; *American Surety Company* v. *Baldwin*, 77 L. ed. 232, 239, col. 2 mid.; *Treinies* v. *Sunshine Min. Co.*, 84 L. ed. 85, at page 93, col. 1 mid.; *Stoll* v. *Gottlieb*, 83 L. ed. at page 108, col. 2 mid.; *Chicot Co. Drainage Dist.* v. *Baxter State Bank*, 84 L. ed. 330, syll. 3, page 334, col. 2 bot.; *Windholz* v. *Everett*, 74 F. 2d 834, 836, col. 2 mid.; *Walling* v. *Miller*, 138 F. 2d 629, syll. 7, page 632, col. 2 bot.; *Federal Trade Commission* v. *Pacific etc. Asso.*, 71 L. ed. 535, syll. 6, page 540, col. 1 top; *United States* v. *Cathcard*, 70 F. Supp. 653, 659, col. 2 top; *Marine Transit Corp.* v. *Dreyfuss*, 70 L. ed. 283, syll. 9. The Puerto Rico Supreme Court itself has recently ruled on this point in the same manner. *González Padín Co. Inc.* v. *Tax Court of Puerto Rico*, 67 D. P. R. 222, syll. 5, and at page 228, Spanish edition (*"The* [jurisdictional] *question cannot now be re-litigated even though our original decision on it might have been erroneous"*).

476, Exhibit E), against the heirs of Ramiro Vidal, including respondent here, *praying in part for a declaratory adjudication that the firm "Monagas & Vidal" had been dissolved; that the one-third interest of Vidal's heirs in Belvedere lands, as bought in by Beauchamp at the Judicial sale in No. 6889 and later by him conveyed to Juan A. Monagas, be confirmed in favor of the latter* and finally thus re-entered upon the proper Land Registry, etc. (R. 453, 456 mid. 458). To this complaint, Ramiro Vidal's widow, *pro se* and as mother of Neftalí Vidal, respondent here, *pleaded by admitting its facts and consenting thereto* (R. 460-461). On May 17, 1924, the district court of Mayaguez entered a final judgment for the Monagas in No. 10,416 (R. 462-465). It granted the complaint's prayer (R. 457-458) and specifically adjudged, among other matters, that "as a result of the dissolution of the partnership *Monagas & Vidal* and of the adjudication to the plaintiffs [petitioners here] of the undivided interest to which each is entitled in the proportion stated, the said plaintiffs acquired said shares subject to the encumbrance on the *Belvedere Estate* of the mortgage granted by the partnership 'Monagas & Vidal' * * * for the sum of $20,000 * * * *the defendants, that is, the heirs of Ramiro Vidal Martínez, being relieved of the obligation of paying the said debt.*" Thereupon, the usual writ of execution issued (R. 465-476), and the proper notarial deed, executed by the marshal (R. 260-279, Exhibit 7), was duly recorded (R. 278). Furthermore, Juan A. Monagas, petitioners' ancestor, fully effected the cancellation of the mortgage-lien for $20,000 upon the Belvedere lands (R. 279-283, Exhibit 8), *thus relieving the heirs of Ramiro Vidal, including respondent here, of their liability as provided for by said judgment in No. 10,416* (R. 464 bot.), in conformance with Vidal's widow's sworn consent thereto (R. 461 mid.).

On February 11, 1938, respondent Neftalí Vidal, shortly upon becoming of full age, with his mother the widow

of Ramiro Vidal, filed a new suit No. 783 in the district court of Mayaguez (R. 285-351, Exhibit 10) against the heirs of Ramón E. Beauchamp and the Monagas family, petitioners herein, whereby the present respondent and his mother sought, respecting case No. 6889, to nullify, *not the judgment therein,* but from the substitution of Vidal's privies in that case down to the judicial sale which occurred in that litigation (R. 303); and they further attempted to annul a prior decree favorable to the Monagas in No. 10,416, relying therefor on the very grounds (R. 290 mid., 302) which were now again urged in the case at bar (R. 108-124; 126-142). The Monagas family, petitioners herein, and other codefendants in No. 783, demurred to the complaint therein, among other grounds, because of insufficiency thereof; that it showed upon its face: the prescription of the action to annul prior suits Nos. 6889 and 10,416; *that the proceedings in Nos. 6889 and 10,416 were res judicata and constituted estoppel preventing collateral attack in No. 783; and that Juan A. Monagas, petitioners' ancestor, had acquired prescriptive title by adverse, bona fide possession for over ten years under a good, recorded title* (R. 305-314, 349 bot.—350). In said prior action No. 783, the judgment on demurrer went entirely for the Monagas family and the heirs of Beauchamp (R. 314-350). The Mayaguez court, painstakingly analyzed the complaint in No. 783, as well as the various grounds of demurrer, and it finally adjudged that the said complaint was insufficient; that the action was barred by prescription; *that Juan A. Monagas had acquired title to Vidal's (respondent's predecessor) share in Belvedere farm by adverse possession for more than 10 years* (R. 347 mid.—349 mid.), since the complaint in No. 783 did "not overcome the presumption of just title claimed by Monagas, inasmuch as the irregularities • • • alleged • • • were not sufficient to destroy this presumption" (R. 348 top); *and that the judgments in No. 6889 and No. 10,416, were res judicata and could not be attacked collaterally* (R. 349

mid., 486 near bot.). An appeal taken by Vidal's heirs in No. 783 was dismissed on July 28, 1942, by the Supreme Court of Puerto Rico (R. 350 bot., 481 top; *Vidal v. Monagas,* 60 PRR 763).

On November 16, 1942, respondent started again the present suit No. 4545 in the Mayaguez district court (R. 1-5, 75-80) whereby, after alluding to the alleged existence of Monagas & Vidal, whereof his father Ramiro Vidal Martínez and the Monagas had been members (R. 75 bot.—76), to the fact of his ancestor's death in 1921 (R. 76 mid.), and to the firm's dissolution (R. 78 mid.), respondent repeated his earlier averments as to having succeeded, *as heir of Ramiro Vidal Martínez,* to a one-third interest in the firm (R. 78 bot.), and prayed judgment for its liquidation, the rendition of accounts from and after 1921, the return of any properties or their value, together with mesne profits, as also for the partition and adjudication thereof (R. 79, 482 mid.). In his amended complaint (R. 75), respondent further asserts that among the firm assets is to be found the *Belvedere estate* with 1470 acres of land (R. 77), which the supreme court below said was the only asset in 1924 of Monagas & Vidal (R. 483 top). Among other defenses, *the proceedings in prior cases Nos. 6889, 10,416 and 783 were duly pleaded as conclusive of the issues attempted to be raised anew by respondent* in the instant cause.

Despite the binding and conclusive effect of former judgments in cases Nos. 6889, 10,416 and 783, finally dispositive of the issues unwarrantedly again relitigated herein by respondent, the courts below have passed upon them in this litigation favoring respondent (R. 477-493), in utter disregard of the aforesaid repeated adjudications in favor of the Monagas family, now petitioners. Thereupon, petitioners appealed to the Court of Appeals (R. 537).

On October 10, 1947, respondent's motion to dismiss or affirm under the Court of Appeals' *Rule 39(b)* was

denied (Supp. R. 548), thereby implying that there were patent errors requiring examination and correction.

But later, the judgment of the insular supreme court, dated November 12, 1946 (R. 494) was erroneously affirmed by the Court of Appeals for the First Circuit on October 4, 1948 (Supp. R. 548, 565).

Questions Presented

I. *Regarding prior judgment in No. 10,416 as res judicata herein.* The earlier judgment in case No. 10,416 does not show any absence of evidence therein. On the contrary, it exhibits previous judicial hearing and inquiry (R. 462-465). At any rate, should the Court of Appeals' ruling based on supposed lack of evidence be allowed to trench upon the binding effect, as *res judicata,* of judgment in prior case No. 10,416, in the face of controlling decisions by this Court and even by the insular Supreme court itself, such as, among others, *Heiser* v. *Woodruff,* 90 L. ed. 971, syll. 8, 327 U. S. 726, and *Amadeo* v. *Compañía del Toa,* 58 PRR 756, syll. 2, and at page 711 mid.? The Court of Appeals has also sanctioned a patently erroneous doctrine: that a *special authorization* must be previously obtained from an insular district court for a parent (respondent's mother) to consent to a judicial decree, like in action No. 10,416. Should such ruling be allowed to stand when it clearly does violence to well-settled local statutory law and decisions to the effect that *parents, in exercise of their plenary right of patria potestas, fully represent minors in adversary proceedings, without need of any previous judicial authorization,* and that provisions of the local special act relative to *ex parte applications* for judicial authorization, concerning alienation of minors' property, are *inapplicable to interparte court proceedings?* Are not infants, according to a vast body of Continental and local

precedents, bound by consent judgments in actions where they are fully represented by their parents, *a fortiori* when, as happened in case No. 10,416, complying with an express condition in judgment therein, deceased Juan A. Monagas, petitioners' ancestor, discharged a $20,000 mortgage-lien to relieve respondent and his mother from liability thereunder? Does not the annulment of judgment in No. 10,416, under the foregoing circumstances, additionally entail a grave miscarriage of justice? Finally, having the insular supreme court freely conceded, as acknowledged by the Court of Appeals (Supp. R. 557), that judgment in case No. 10,416 *"dealt with the same cause of action now before us, and concerned the same parties" and that if it was valid "it decided the issue adversely to the plaintiff [respondent]"* (Supp. R. 487 top), may such prior consent-judgment in No. 10,416 be attacked collaterally, in direct conflict with firmly established local law and authorities, as well as federal precedents?

II. *Respecting the res judicata character of judgment in prior case No. 783.* Having sought to attain the same object by substantially the same means as in prior litigation No. 783, wherein he was defeated, and where an appeal by him was dismissed by the insular supreme court without respondent seeking any further review in said case No. 783, either by the Court of Appeals or in this Court, can respondent subsequently maintain the present action in the face of this Court's applicable decision in *Angel* v. *Bullington,* 91 L. ed. 833, syll. 8, page 837, 330 U. S. 183, 189, even followed by the insular supreme court itself in *González Padín Co. Inc.* v. *Tax Court of Puerto Rico,* 67 DPR 222, syll. 5, at page 228, Spanish edition? Is not respondent to be held bound as having concluded his litigation as effectively as though he had proceeded through the highest tribunal available to him? Having the Court of Appeals acknowledged in the present case

(Supp. R. 560 bot.), with reference to earlier suit No. 783, that *"it is hard to see any substantial difference between the case at bar and Calaf* v. *Calaf* (232 U. S. 371, 374, 58 L. ed. 642)," can judgment for respondent in this cause be validly upheld in face of the binding *res judicata* rule set up by this Court in *Calaf* v. *Calaf*, a case hailing precisely from Puerto Rico, *that the res judicata defense is not to be defeated by "differing allegations which are simply different means to reach the same result"?* Can the judgment below stand when the ignored well settled law and decisions in Puerto Rico are also in harmony with apposite rulings of this Honorable Court? (Supporting Brief, Point II, subdiv. B, at p. 33, *et seq.*). Furthermore, may the Court of Appeals validly assert that "it is for the Supreme Court of Puerto Rico to say what was in fact actually decided and what was merely dictum" in prior case No. 783 (Supp. R. 562 mid.), when such holding is utterly in conflict with the basic principle adverted to by this Honorable Court in *Angel* v. *Bullington*, 91 L. ed. 832, syll. 4, that *"for the purposes of res judicata, the significance of what a court says it decides is controlled by the issues which were open for decision"?* And, lastly, after a binding decision between the same parties in prior cause No. 783, regarding the validity and conclusiveness of judgment entered in No. 10,416 and of execution proceedings had in No. 6889, should the Court of Appeals be permitted to now set aside such previous and conclusive holdings in No. 783 just because they were covered in but one paragraph? (Supp. R. 562 mid.).

III. The record shows that Juan A. Monagas, petitioners' ancestor, has openly and uninterruptedly possessed in fee, since its acquisition in 1923, the property interest which respondent now seeks again to reach, and that said Monagas' title was even judicially confirmed in subsequent actions No. 10,416 instituted in 1924 and in No. 783, which was finally decided in favor of the Monagas

family in 1942 (*Vidal* v. *Monagas*, 60 PRR 763). In failing to uphold the validity of petitioners' title also by adverse possession, is not the judgment sought to be reviewed herein manifestly wrong as inescapably inconsistent with deeply rooted principles and well settled local law and decisions, as exhibited in the supporting brief, at page 36?

Reasons relied upon for allowance of the writ

1. The matters sought to be reviewed herein involve most important questions of *res judicata*. The Court of Appeals has rendered a decision in direct conflict and which does clear violence, as pointed out in the foregoing questions, to well settled principles of local law and the applicable insular and federal precedents. The decision below has so far departed, or sanctioned departure, from the accepted and usual course of local law and decisions, as to call for an exercise of this Court's reviewing power.

2. In holding adversely to petitioners, the Court of Appeals has even gone so far as to erroneously refer, concerning the serious *res judicata* doctrine involved, to a *dissent* in *Angel* v. *Bullington*, 330 U. S. 183, 201 *et seq.* (Supp. R. p. 561, note 3), instead of considering and applying the binding authority of this Court's majority decision therein.

3. It thus patently appears that the Court of Appeals fell into inescapable errors in disregarding at least two prior valid judgments (Nos. 10,416 and 783), which were plainly *res judicata* in the instant cause. The judgment and opinion *a quo* cannot be read without a mounting sense, a poignant realization of a most regrettable failure of justice below.

4. *Interest republicae ut sit finis litium* is a maxim as old as the law and is the foundation of the *res judicata*

doctrine. Needless to say the authority of prior adjudications is inseparably connected with the maintenance of public order, the repose of society and the quiet of families. Such is the lofty contribution of the doctrine of *res judicata* to judicial effectiveness and social stability. The rule requires that what has been once definitely determined, ratified or settled through or by a competent tribunal shall be accepted as irrefragable, legal truth.[6]

5. As held by this Hon. Court in *Reed* v. *Allen*, 76 L. ed. 1054, syll. 2: "The mischief which would follow the establishment of a precedent for disregarding the doctrine of *res judicata* would be greater than the benefit which would result from relieving some case of individual hardship." In *Baltimore S.S. Co.* v. *Phillips*, 71 L. ed. at page 1074, col. 1 top, it is again adverted: "The conclusion that the judgment must be reversed cannot be *avoided without subverting long established principles of general application* [*res judicata* principles], *which we are not at liberty to set aside for a special case of hardship.*" And in *Hart Steel Co.* v. *Railroad Supply* (61 L. ed. at p. 1153, col. 1 bot.), followed by the Supreme Court of Puerto Rico itself in *Cintrón* v. *Yabucoa*, 54 PRR 493, syll. 3, 499 top, it was settled that:

> "This doctrine of res judicata is not a mere matter of practice or procedure inherited from a more technical time than ours. *It is a rule of fundamental and*

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[6] And this is certainly a case in which the policy of stopping repeated litigation should prevail, for respondent was afforded and he availed, *though unsuccessfully*, of three opportunities (cases Nos. 6889, 10,416 and 783) to fully assert his claims or defenses, and to inquire into the undeniable truth and validity of decisions against him. And on reliance upon such earlier judicial pronouncements, *which became res judicata*, the Monagas family, petitioners here, have unremittingly toiled on the Belvedere farm for upwards of a quarter of a century, until the unexpected, clearly erroneous judgment was entered here in defiance of three binding prior decisions which, since 1924, have been also guiding rules of property.

substantial justice, 'of public policy and of private peace', which should be cordially regarded and enforced by the courts to the end that rights once established by the final judgment of a court of competent jurisdiction shall be recognized by those who are bound by it in every way, wherever the judgment is entitled to respect."

6. This Court has expressly indicated that the *res judicata* doctrine is substantially the same in Puerto Rico as in other American jurisdictions. *Calaf* v. *Calaf,* 58 L. ed. at page 645, col. 1 mid. ("We understand *the Codes* [Civil Code, 1930 ed., § 1204, see Appdx. A], and the court to assert *a doctrine substantially that of our law*"). Should the action of the insular supreme court be then validly countenanced, as the Court of Appeals apparently did, to the extreme of letting it apply the *res judicata* doctrine, as a rule of public policy, in a way evidently inharmonious with fundamental principles which, under such doctrine, even the Puerto Rico supreme court itself has long firmly established in the community, in accord with obligatory, applicable rulings of the Supreme Court of the United States?

7. The *res judicata* doctrine is not belittled by any attempt at merely labeling it a matter of local law. That would amount to an obvious misconception of the essential purpose and great public significance of such universal principle. If it is the same substantially prevailing in continental United States (*Calaf* v. *Calaf, supra*), then all American citizens in Puerto Rico are also and equally entitled to the full benefit of that fundamental rule of justice, of private peace and of public policy, which should not be lightly disregarded nor sterilized by calling it a local practice. *A fortiori,* when at least two prior valid judgments (Nos. 10,416 and 783), among other obviously prejudicial errors, have been brushed aside in the instant litiga-

tion, in open conflict with basic and binding law and principles repeatedly upheld by the Puerto Rico supreme court, by the Court of Appeals and by the Supreme Court of the United States. In this connection, it should be additionally recalled that in duly complying with a condition expressly imposed by judgment in earlier case No. 10,416, entered for the Monagas in 1924 (R. 464 bot.—465), which has been now invalidated, Juan A. Monagas, petitioners' ancestor, even personally satisfied a $20,000 mortgage debt, to relieve respondent and his mother (Vidal's heirs), at their own behest (R. 461 mid.), of all pecuniary liability therein (see post, Point I-C, p. 25).

8. This national Supreme Court has reviewed and reversed lower courts solely because of misapplication of the *res judicata* rule which, as stated by this Court, is of great significance as it concerns the orderly and uniform "*administration of justice.*" *Angel* v. *Bullington* (1947), 330 U. S. 183, 186, 91 L. ed. 832, 835; *Heiser* v. *Woodruff*, 90 L. ed. at p. 973, 327 U. S. 726, 729; *Reed* v. *Allen*, 76 L. ed. 1054, syll. 2; *Baltimore S. S. Co.* v. *Phillips*, 71 L. ed. 1070, 1074, col. 1 top; *Hart Steel Co.* v. *Railroad Supply*, 61 L. ed. at p. 1153, col. 1 bot., quoted and followed in *Cintrón* v. *Yabucoa*, 54 PRR 493, syll. 3, p. 499 top. It is thus nakedly obvious that allowance of a certiorari in the instant cause, will keep bright the flame of justice: the lofty goal of Bench and Bar.

WHEREFORE, it is respectfully submitted that this petition for a writ of certiorari should be granted, for the reasons briefly sketched above and more fully elaborated in its supporting brief.

December 13, 1948.

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BRIEF IN SUPPORT OF THE FOREGOING PETITION

Opinions Below

The opinion of the Supreme Court of Puerto Rico is reported in *Vidal* v. *Monagas*, 66 DPR 622-642, Spanish edition. Its English version is set out in the printed record (R. 477-493).

The opinion of the Court of Appeals for the First Circuit, rendered October 4, 1948, appears in the printed record (Supp. R. 549-564).

Jurisdiction

The jurisdiction of this Court is invoked under *Section 1254* of the new Title 28, United States Code Judiciary and Judicial Procedure, effective September 1, 1948.

Statement of the Case

It appears in the Petition (*ante*, pp. 2-8), containing all that is material to the consideration of the questions presented.

Specification of Errors to be Urged

I. The affirmatory judgment of the Court of Appeals, in not accepting as *res judicata* the former judgment in suit No. 10,416, is clearly in conflict with recognized, existing local law and with applicable insular and federal precedents.

II. The Court of Appeals' failure to uphold another prior judgment in case No. 783, as *res judicata* in the instant litigation, is also plainly inconsistent with prevailing statutory and decisional local law, and the apposite federal precedents.

III. In failing to hold that Juan A. Monagas, petitioners' ancestor, had acquired title by adverse possession, as held between the same parties in earlier case No. 783, the judgment under review is manifestly inconsistent with deeply rooted principles and the well-settled local law.

ARGUMENT

I. The affirmatory judgment of the Court of Appeals, in not accepting as *res judicata* the former judgment in suit No. 10,416, is clearly in conflict with recognized, existing local law and with applicable insular and federal precedents.

Case No. 10,416 *was exclusively a proceeding in invitum or judicial action from the start,* where the Mayaguez district court, upon defendants' consent, entered judgment accordingly (R. 462-465). The court's decree in No. 10,416 was rendered after a hearing and argument by plaintiffs and defendants through their respective attorneys, and upon consideration of the affidavit or sworn pleading filed in that case by respondent's mother, admitting the facts in the complaint and consenting to judgment therein on certain terms (R. 460-461).

Apropos of this judgment in No. 10,416, the insular supreme court expressly conceded that: "Besides denying certain averments of the complaint, the defendants [petitioners in the instant case] pleaded the proceedings had in cases Nos. 6,889, 10,416 and 783, invoking them as conclusive on the issues now raised by the plaintiff [respondent herein]. * * * Another judgment invoked by the appellants as decisive of the controversy settled by the judgment appealed from, is that rendered in case 10,416 involving the

liquidation of the partnership Monagas & Vidal. *Undoubtedly that judgment dealt with the same cause of action now before us, and concerned the same parties.* If it was valid, it decided the issue adversely to the plaintiff [respondent]" (R. 482 bot., 487 top). And as will be hereinafter shown, there is not a scintilla of doubt as to the judgment's validity in No. 10,416.

A. Inapplicability of citations in the Court of Appeals' opinion.

The Court of Appeals, upon affirmance, chose not to label as *res judicata* the judgment in prior adversary suit No. 10,416, because, as it said: (1) there was *no authorization* from a district court determining the necessity and utility *for the consent decree* entered therein; (2) there was *no evidence of the necessity and utility* of such consent given by the mother on behalf of respondent, then a minor; and (3) in view "that minor's rights are *not given adequate protection by judgments* entered only because they are *consented to by a parent* (Opinion, Supp. R. 558 bot.). Thereupon, the Court of Appeals refers to *Cruz* v. *Central Pasto Viejo, Inc.*, 44 PRR 354, interpreting Sections 159 and 212(5) of the *Civil Code*, 1930 edition (Supp. R. 558).

The *Cruz* case is inapplicable. It involved a damage claim in behalf of a minor which was *extrajudicially settled* by his father *without the intervention of any district court.* There the parties did not avail of any district court's intervention at all in respect to an *extrajudicial* compromise contract. *Case No. 10,416 did not involve any extrajudicially settled compromise contract, but a judicially consented decree.* However, if Vidal's widow's (respondent's mother's) consent had been given respecting an *extrajudicial* compromise contract concerning her then minor son, which was not the case here, all that would have been required, according to the *Cruz* case, was *a district court's subsequent approval* of the transaction, *in a much less formal fashion than through the solemnity of a judg-*

ment like that entered in No. 10,416 (R. 462-465). Sections 159 and 212(5) of the Civil Code (see *Appdx. A*), as interpreted in the *Cruz* case, cited by the Court of Appeals, merely require authority of a district court for alienation of minors' property by their parents or tutors. But that statutory requirement, according to local law, is only necessary in special, *ex parte proceeding involving extrajudicial transactions. It has never been imposed on litigants in adversary suits dealing with a judicial phase of the litigation, like the consent decree entered in No. 10,416* (R. 462-465). A consent judgment is not a mere authentication of an agreement between parties, *but is a judicial act involving exercise of judicial power. Urbio* v. *Porto Rico Ry. Light & Power Co.* (1946), 68 F. Supp. 841, syll. 2, affd. 164 F. 2d 12.

B. The Court of Appeals' decision respecting case No. 10,416, is obviously inconsistent with the following statutes and well established principles of local law.

1. *In exercise of parental, plenary right of patria potestas, parents fully represent minors in adversary proceedings, without need of any previous judicial authorization.*

There was no need of any special authorization to respondent's mother by a district court previously determining the necessity and utility for the consent decree entered in adversary action No. 10,416. Such holding clearly does violence to the following uniform, well-settled precedents and principles of local law:

a. *In exercise of the parental plenary right of patria potestas,*[7] *especially in adversary proceedings like those*

[7] The existence of patria potestas is crystal clear in No. 10,416. It was a fact averred in the complaint therein (R. 460, *Sixth*), admitted (R. 460 bot., par. 2) and sworn to (R. 461, verification) in the consenting answer (R. 460-461), and also expressly so found by the insular supreme court (R. 462 top). It was even explicitly admitted in respondent's three sworn complaints in the present case (R. 4, 38, par. V, 78).

in No. 10,416, there is no need of any previous judicial authorization nor of even appointing any guardian ad litem, the father or mother being the lawful representative of the minor children in such judicial actions. Cibes v. *Santos,* 22 PRR 208, followed in *Dávila* v. *P. R. Ry. Lt. & P. Co.,* 44 PRR 924, 930; *Agostini* v. *Registrar,* 39 PRR at page 524 mid.; *Lazcano* v. *Heirs of Sifonte,* 42 PRR 387, syll. 2, p. 389 bot.; *Biaggi* v. *Corte* (March 15, 1948), 68 DPR 407, syll. 2, Spanish edition; *Rodríguez Pou* v. *Martínez,* decided by the insular supreme court on March 19, 1948, 68 DPR 451, syll. 5-7, Spanish edition; *Code of Civil Procedure,* § 56; *Civil Code, ed. 1930,* § 153; *Puerto Rico new Rules of Civil Procedure, No.* 17(f), 60 PRR, Appdx., p. 18 bot.[8] (See *Appendices* A and B.)

b. *As a corollary from the foregoing, the provisions of the local special act relative to ex parte applications for judicial authorizations concerning alienation of minor's property, are inapplicable to inter-parte court proceedings.*

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[8] In *Agostini* v. *Registrar,* 39 PRR 522, 524 mid., it was held: "When in an action against heirs *including minors* the latter *are represented by their father with patria potestas* and final judgment is executed on their property the deed of sale is recordable * * * so when the surviving parent is in full exercise of his *patria potestas* over the minor children * * * *it is unnecessary to appoint a guardian ad litem* to represent minors, the father being their lawful representative." In *Lazcano* v. *Heirs of Sifonte,* 42 PRR 387, syll. 2, it is also stated: "Where a minor institutes an action and appears therein *represented by her father with patria potestas* over her, *this is all such minor needs to perfect her capacity to sue.*" Similarly, the *Puerto Rico Civil Code,* ed. 1930, § 153, and Section 56 of *P. R. Code of Civil Procedure* (equivalent to Rule 17(f) of the new Rules of Civil Procedure, 60 PRR, Appdx., p. 16 bot.), provide that when an infant is a party, *"he must appear by his father or mother with patria potestas, if living."* And in *Biaggi* v. *Corte* (March 15, 1948), 68 DPR 407, syll. 2, the insular supreme court holds that "Rule 17(f) has not changed the doctrine in this jurisdiction. Under Sections 56 of the Code of Civil Procedure and 153 of the Civil Code, as under Rule 17(f), *a father or mother with patria potestas represents a minor in a litigation*", though such minor is the real party in interest.

This is another fundamental rule of property and a basic principle of local law established at least since 1913 by the Puerto Rico Supreme Court. *Flores* v. *Registrar* (1913), 19 PRR 967; *García* v. *Registrar* (1916), 23 PRR 394, 397.[9]

c. Under the federal Organic Act for Puerto Rico, the power to establish insular *policies* for the protection of infants, as well as any other general or legislative policy, resides exclusively in the local legislature (48 U. S. C. A., Sec. 811). For decades, the territorial Legislative Assembly has enacted that, in an action, a minor "*must appear by his father or mother with patria potestas, if living.*" See Code of Civil Procedure, sec. 56; Civil Code, ed. 1930, sec. 153; Puerto Rico Rules of Civil Procedure, No. 17 (f), 60 PRR Appdx., p. 16, bot. (See *Appendices A and C*); *Agostini* v. *Registrar*, 39 PRR 522, 524 mid.; *Biaggi* v. *Corte*, decided March 15, 1948, 68 DPR 407, syll. 2, Spanish, edition, and other cases cited under subdivision I-B and in footnote 8, *ante*. These legislative enactments, vesting parents with plenary authority to fully represent their minor children in adversary proceedings, stem from basic civil law principles that are clear as a bell. Such clarity is responsible for the profuse and uniform local precedents above indicated. Any attempt by the insular judiciary to override, amend, extend or fix a new or different policy, would fly in the face of unambiguous local law and the established precedents of long standing. It plainly would be an attempt beyond the competence of insular tribunals which, as other courts of justice, are not concerned with

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[9] A brief examination of cases requiring evidence as to the necessity and convenience for alienation of minors' property, and of previous judicial authority therefor, shows that such decisions involve attempted *private or extrajudicial* alienation of minors' interests in realty without the usual judicial intervention. *Such rulings are wholly inapposite respecting adversary litigations like case No. 10,416, which was not an ex parte application under the insular act relative to special legal proceedings* (*Code of Civil Procedure*, ed. 1933, § 614, i.e., *Law of Special Legal Proceedings*, §§ 80, 81).

the propriety of extending or amending legislation—nor with its need or wisdom. *Olsen* v. *Nebrasca*, 85 L. ed. 1305, syll. 3, page 1310; *Sunshine Anthracite Coal Co.* v. *Adkins*, 84 L. ed. 1263, syll. 7, page 1272, col. 1 mid.; *Mercado* v. *Riera*, 152 F. (2d) at page 96, col. 1 mid., cert. den. 90 L. ed. 1612; *Mercado* v. *Corte*, 62 PRR 350; *Porrata* v. *Court*, 53 DPR at page 155 mid. (Sp. ed.), 53 PRR 140.

2. *According to controlling federal and local decisions, even supposed lack of evidence is unavailing to trench upon the binding effect, as res judicata, of judgment in prior case No. 10,416.*

The insular supreme court's ruling, as affirmed by the Court of Appeals, failed to accept the judgment in No. 10,416, as *res judicata* in the instant cause, on the ground that "there was *no evidence* of the necessity or utility of the consent given on behalf of the minor" (Opinion, Supp. R. 557, bot.). That is a ruling positively in conflict with the applicable and binding decision of the United States Supreme Court in *Heiser* v. *Woodruff* (1946), 90 L. ed. 971, syll. 8, 327 U. S. 726, and with that of the insular supreme court itself in *Amadeo* v. *Compañía Azucarera del Toa*, 58 PRR 756, syll. 2. In the *Heiser* case, *supra*, this national highest Tribunal clearly held that *"a judgment is nonetheless res judicata of issues raised because it is based on a lack of evidence to support the allegations made."* With this view, the Puerto Rico supreme court is in perfect accord. *Amadeo* v. *Compañía Azucarera del Toa*, 58 PRR 756, syll. 2, and at page 761 mid., where it is explicitly stated: *"The attack made* to the proceedings for approval *based exclusively on the lack of evidence is* in such consequence not direct, *but collateral, and is impossible at this stage of the proceedings."* Certainly, a so-called absence of evidence does not detract from the decisiveness and finality of a prior judgment. However, from the face of earlier judgment in No. 10,416, such asserted irregularity does not appear. On the contrary, the judgment itself in

No. 10,416 even shows there was a judicial inquiry prior to its entry (R. 462-465; *ante*, p. 16).

3. *A consent decree, as in No. 10,416, is res judicata and binding on infants, according to local and federal precedents.*

The Court of Appeals' unwarranted conclusion "that minor's rights are not given adequate protection by judgments entered only because they are consented to by a parent" (Supp. R. 558 bot.), unjustly deprives judgment in No. 10,416 of its undeniably binding and conclusive force as *res judicata* in the present case. It is respectfully submitted that such ruling is wholly discordant with local practices regarding parents' powers in Puerto Rico to fully represent or appear for their minor children *in adversary proceedings*, as hereinbefore demonstrated (*ante, subdiv. 1*, p. 18). Such conclusion is, in addition, *utterly inconsistent with the following well rooted local and federal res judicata principles governing consent decrees:*

a. *In Puerto Rico it is firmly established that a consent decree cannot be collaterally assailed.* As far back as 1911 and as recently as 1945, the insular supreme court has held that by consenting to the entry of judgment the defendant (respondent and his mother) expressly admits the facts set forth in the complaint, and that such judgment by consent, rendered by a court with jurisdiction of the subject matter and of the parties, like in No. 10,416, is valid and cannot be collaterally attacked. *Ex parte Morales* (1911), 17 PRR 1004, 1006 bot.; *Suàrez* v. *Betancourt* (1945), 64 PRR 448, syll. 3 and 4; *Code of Civil Procedure of Puerto Rico*, §§ 118, 132, 313[10]; *Harding* v. *Harding*, 49 L. ed. 1066;

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[10] *Code of Civil Procedure of Puerto Rico* (§§ 118, 132, 313, Appdx. C) shows that if a defendant (Vidal's heirs in No. 10,416) once in court does not controvert the complaint, its allegations must be taken as true; and that a defendant may also offer to allow judgment to be taken against him for the sum or property, or to the effect specified.

Snell v. *J. C. Turnell Co.*, 285 Fed. Rep. 356, syll. 2, and at page 358 bot.

b. *In Puerto Rico, as in other jurisdictions, infants are bound by consent judgments in actions wherein they are represented by their parents, a fortiori if such adjudications are entered in behalf of such minors, like in prior case No. 10,416 (see post, subdiv. C).* *Urbio* v. *Puerto Rico Ry. Light & P. Co.*, 68 F. Supp. 841, syll. 3, and at page 843, affd. 164 F. 2d 12; *Thompson* v. *Maxwell etc. Co.*, 42 L. ed. 540, 544, col. 1 mid.; *Dickson* v. *Neal* (C. C. A., 8), 2 F. 2d 534, syll. 8, page 537; *Derrisaw* v. *Schaffer*, 8 F. Supp. 876 syll. 7.[11]

c. *In any event, there being perfect identity of parties and causes* of action in No. 10,416 and in the instant case, as *expressly held by the insular supreme court* (R. 487 top), the conclusion is inevitable that any question as to alleged *want of capacity* in respondent's mother to consent to judgment in former case No. 10,416, is now foreclosed and has become *res judicata*. *Galanes* v. *Galanes*, 54 PRR 842, syll. 5: "*The want of capacity of a mother to judicially represent her son comes too late when raised for the first time* [even] *on* [direct] *appeal.*" *See to same effect: E. V. Parker* v. *Motor Boat*, etc., 86 L. ed. 184, syll. 5, page 192; *McCandles* v. *Furland*, 79 L. ed. 202, 206, col. 2, 207 col. 1 ("The rule is of general application and has been

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[11] *Urbio* v. *Puerto Rico Ry. Light & P. Co.* (1946), 68 F. Supp. 841, syll. 3, p. 843, affd. 164 F. 2d 12, states that in Puerto Rico infants are bound by consent judgments even though they could not have entered into a valid private agreement containing same terms and conditions. *Thompson* v. *Maxwell, etc. Co.*, 42 L. ed. 540, 544, col. 1 mid., similarly holds that infants are bound by consent decree agreed to by their attorney in accordance with settlement made in their behalf by their mother and guardian, and that such consent decree cannot be collaterally attacked. Moreover, *Derrisaw* v. *Schaffer*, 8 F. Supp. 876, syll. 7, says that an infant who sues by next friend or legal guardian is bound by judgment *to same extent as if he were of full age.*

applied in the federal appellate courts to a variety of cases. To lack of capacity on the ground of infancy * * *": p. 206 col. 2); *Oklahoma* v. *U. S. Civ. Serv. Com.*, 91 L. ed. 794 (failure to object in the trial court to a petitioner's capacity is a waiver of that defect); *Walling* v. *Miller* (1943), 138 F. 2d 629, syll. 9, at page 632 col. 2 bot., cert. den. 88 L. ed. 1076 ("* * * that Administrator lacked authority to maintain action * * *. The error pertained only to the *capacity* of the plaintiff and to the remedy, not to the power of the court * * * the decree is not subject to attack for such an error * * *").

If court entering consent decree had, as here, jurisdiction of subject matter and of parties, objection to the merits, like lack of consent, is reviewable upon appeal only. *Walling* v. *Miller*, 138 F. 2d 629, sylls. 1-7, cert. den. 88 L. ed. 1076; *Swift & Co.* v. *U. S.*, 72 L. ed. 588 sylls. 6, 9, 12.

In *Angel* v. *Bullington* (1947), 91 L. ed., page 833, syll. 13, this Hon. United States Supreme Court, in one of its latest pronouncements on the *res judicata* doctrine, held:

> "* * * *An adjudication bars future litigation between the same parties not only as to all issues actually raised and decided, but also as to those which could have been raised* [ib., p. 835 col. 1 mid.] * * * Litigation is the means for vindicating rights, but it may also involve unwarranted friction and waste. The doctrine of *res judicata* reflects the refusal of law to tolerate needless litigation. Litigation is needless if, by fair process, a controversy has once gone through the courts to conclusion * * * *And it has gone through, if issues that were or could have been dealt with in an earlier litigation are raised anew between the same parties* [ib., p. 839, col. 1 top] * * *." See also cases in footnote 13.

C. The patently erroneous voiding of judgment in No. 10,416, further entails a grave miscarriage of justice.

The judgment in prior action No. 10,416 was and is manifestly valid as has been shown. Its validity was further adjudicated *and, thus, judicially ratified in favor of the Monagas by subsequent action No. 783* brought by respondent here after attaining his majority, and by his mother.[12] The effectiveness of judgment in the earlier case No. 10,416 must, of necessity, operate as *res judicata* in the instant cause. In holding otherwise, a tremendously inescapable error has been committed, under clearly well-established basic principles on the *res judicata* doctrine, hereinbefore demonstrated.

But it must be added that still another serious, patently harmful situation is presented in rejecting the crystal clear validity of judgment in former suit No. 10,416.

1. *Complying with condition in judgment No. 10,416, deceased Juan A. Monagas, petitioners' ancestor, fully discharged a $20,000 mortgage-lien to relieve Vidal's heirs of liability thereunder.*

The voiding of said consent decree in No. 10,416 further entails a grave failure or miscarriage of justice, as urged

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[12] After respondent reached his majority, he and his mother, Ramiro Vidal's widow, brought a new suit numbered 783 in the Mayaguez district court (R. 285-304) against the heirs of Ramon Beauchamp and the Monagas family, whereby the present respondent and his said mother, by their alleged second cause of action in No. 783 (R. 292-303), after referring to the earlier suit against them by the Monagas (No. 10,416), and to the judgment therein rendered on May 17, 1924, they sought to annul that prior judgment on the asserted grounds, among others, that respondent's mother consented thereto owing to certain supposed misrepresentations by Monagas (R. 297 bot. 299); that No. 10,416 involved the acknowledgment of a conveyance of real property such as the one-third interest in Belvedere estate, without a petition of necessity and utility

(*Footnote continued from preceding page*)

by petitioners in their brief and at the oral argument before the Court of Appeals. Upon advisement and due consideration, the final judgment in No. 10,416 was entered by the Mayaguez district court on May 17, 1924 (R. 462-465), granting the complaint's prayer (R. 457-458), and specifically acknowledging and adjudging, among other matters, title in the Monagas over their respective proportionate shares in the Belvedere Estate, *but on condition that a $20,000 mortgage liability be paid by the said Monagas to relieve Vidal's heirs (respondent and his mother) "of the obligation of paying said debt"* (R. 464 bot. 465). It was there expressly provided:

> "*Fourth:* That as a result of the dissolution of the partnership 'Monagas & Vidal' and of the adjudication to the plaintiffs of the undivided interest to which each is entitled in the proportion stated, the said plaintiffs [the Monagas, petitioners here] acquired said shares subject to the encumbrance on the 'Belvedere Estate' of the mortgage granted by the partnership 'Monagas & Vidal' * * * for the sum of $20,000 as security for promissory notes * * * the defendants [respondent and his mother], *that is, the heirs of Ramiro Vidal Martinez, being relieved of the obligation of paying the said debt* * * *" (R. 464 bot. 465).

Juan A. Monagas, now deceased (petitioners' ancestor), faithfully complied with said condition in judgment No.

in favor of Neftali Vidal-Garrastazu and without evidence warranting the court's decision; and that, therefore, the court lacked jurisdiction over the then infant Neftali Vidal in No. 10,416 (R. 302, 303 bot.). Judgment was entered in No. 783 for the Monagas and against the respondent here and his mother (R. 314, 349 bot.). *It was there held, among other things, that the proceedings in former suit No. 10,416 could not be attacked collaterally.* Such holding was expressly recognized by the insular supreme court to have been made in judgment No. 783 (R. 486 near bot.). An appeal from this judgment by Vidal's heirs was dismissed. *Vidal* v. *Monagas* (1942), 60 PRR 763. *Hence, the judgment in No. 10,416 was newly reinforced and for all purposes confirmed by that rendered in No. 783, as against respondent in the present case.*

10,416, by fully paying the $20,000 mortgage-notes on the Belvedere estate (R. 279-282, Exhibit 8), *thus relieving Vidal's heirs of their liability as provided for by the said judgment in No. 10,416, and in conformance with Vidal's widow's sworn consent thereto* (R. 461 mid.).

Could it be possible to fail finding the existence not only of patent and inescapable error but of an obviously inherent failure of justice in the unwarranted and unjust annulment of prior judgment in case No. 10,416?

II. This Court's affirmance and its failure to sustain prior judgment in No. 783, as *res judicata* in the instant litigation, is also plainly inconsistent with prevailing statutory and decisional local law, and the apposite federal precedents.

A. Reasoning advanced by the Court of Appeals for not disturbing the erroneous ruling below respecting judgment in No. 783, is not warranted.

The Court of Appeals declined to disturb the erroneous ruling by the supreme court of Puerto Rico in respect to prior judgment in No. 783, apparently on the basis that the Mayaguez district court in said action No. 783 (1) "covered the question of *res judicata* in but one paragraph"; and (2) that "it is for the Supreme Court of Puerto Rico to say what was in fact actually decided and what was merely dictum in the opinion of the insular District Court in case No. 783" (Opinion, Supp. R. 562).

(1) It is respectfully submitted that the binding effect of a decision as *res judicata* cannot be measured or belittled by the orthographical length or extension employed by a court in an earlier litigation. A judgment is nonetheless *res judicata* of issues raised because it is written in a few words. What, then, about a brief per curiam or about a dismissal without opinion? Can it be said that such judgments should not operate as *res judicata? Even*

matters not pleaded nor decided, but which could have been raised or asserted, are barred.[13]

(2) It is also urged, with all due respect, that once federal appellate jurisdiction is acquired and exercised, as in the instant cause, it is not for the supreme court of Puerto Rico to say what was in fact actually decided and what was merely dictum in a prior case between the same parties. Such conclusion by the Court of Appeals is obviously in conflict, among others, with a recent determination by this United States Supreme Court, that "***For the purpose of res judicata, the significance of what a court says it decides is controlled by the issues which were open for decision.***" *Angel* v. *Bullington* (1937), 91 L. ed. 832, syll. 4, and at page 835, col. 1 bot., 330 U. S. at page 187.[14]

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[13] "An adjudication bars future litigation between the same parties not only as to all issues raised and decided, *but also as to those which could have been raised.*" *Angel* v. *Bullington* (1947), 91 L. ed. 833, syll. 13, and at page 839, col. 1 top; *Heiser* v. *Woodruff* (1936), 90 L. ed. 971, syll. 9, p. 977, col. 2 bot.; *Chicot etc. Dist.* v. *Baxter State Bank*, 84 L. ed. 330, syll. 6, p. 335, col. 1 top; *Méndez* v. *Baetjer* (CCA, 1), 106 F. 2d at p. 163 (syll. 3, 8), pp. 165, 166; *Insular Board of Elections* v. *District Court* (1944), 63 PRR 787, syll. 6; *González Padín Co. Inc.* v. *Tax Court of Puerto Rico* (1947), 67 DPR (Spanish edition) at p. 228, citing and following *Angel* v. *Bullington, supra,* among other United States Supreme Court decisions; *Graniela* v. *Yolande, Inc.* (1946), 65 PRR 664, syll. 3; *Manrique* v. *Aguayo,* 37 PRR at p. 320, followed in *Heirs of Rivera* v. *Lugo,* 63 PRR at p. 17 top.

[14] Aside from the foregoing, no other logical ground is conceived to justify the result reached below respecting prior judgment in case No. 783 (Supp. R. 561). In passing, let it be said that the function of the insular supreme court in establishing rules of judicial administration should not be validly countenanced to the point of applying the res judicata doctrine, as a rule of public policy, in a way evidently inharmonious with fundamental principles which,

(*Continued on following page*)

Yet, the ruling in No. 783, regarding the conclusiveness of proceedings in Nos. 6,889 and 10,416, *was not a dictum* as intimated by the Court of Appeals (Supp. R. 562). What were the issues in former suit No. 783? Vidal's heirs (respondent here and his mother) sought to reach the very ⅓ interest in Belvedere estate, which is the identical and undeniable object of the present case, wherein the Puerto Rico supreme court itself found that such *farm was the only asset* involved (R. 483 top). The Monagas, by demurrer (see post, footnote 18), resisted on several grounds, *including the conclusive effect of earlier proceedings in Nos. 6889 and 10,416* (R. 305, 313 mid.). The Mayaguez district court considered the question of *res judicata* in No. 783, and found it adequate (R. 349 mid-350). *This is freely conceded by the insular supreme court itself, when it says* in its opinion below *that, "The [Mayaguez] court in case No. 783 also stated that the proceedings in cases Nos. 6,889 and 10,416 were not void* but voidable, *and that they could not be attacked collaterally"* (R. 486 near bot.). It all affirmatively shows that such *res judicata* ruling *was not a mere dictum, but an issue actually raised and decided* by the Mayaguez district court in case No. 783, *and that the merits of that res judicata issue, having been thus opened and even adjudicated in said earlier litigation No. 783, cannot and, in jus-*

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under such doctrine, ever the Puerto Rico Supreme Court itself has long firmly established in this community, in accord with obligatory, applicable rulings made by the Supreme Court of the United States, as has been already shown. A fortiori, *when the res judicata doctrine is substantially the same in Puerto Rico as in other American jurisdictions, Calaf* v. *Calaf*, 58 L. ed. at page 645, col. 1 mid., and it *"should be cordially regarded and enforced by the courts." Steel Co.* v. *Railroad Supply Co.*, 61 L. ed. at p. 1153, col. 1 bot., quoted and followed by the lower supreme court in *Cintrón* v. *Yabucoa*, 54 PRR 493, syll. 3, and at page 499 top.

tice, should not now be relitigated.[15] *Angel* v. *Bullington* (1947), 91 L. ed. 837, col. 1 mid.; *Heiser* v. *Woodruff* (1946), 90 L. ed. 971, syll. 1.

(3) But the Court of Appeals states that "there is good basis for the conclusion of the court below that all that was actually decided in No. 783 was that the cause of action set out therein had prescribed" (Supp. R. 562). Still, judgment in former case No. 783 must be held valid as *res judicata* in the present litigation, even if such prior action No. 783 had been actually decided on the ground that it had prescribed. Why? Respondent himself, as shown by the Court of Appeals' opinion (Supp. R. 554), has admitted on this record that "the partnership expired [at least] on June 30, 1924" (see also R. 227 top, Exhibit B). The insular supreme court has also adjudged that *Vidal & Monagas,* up to the time of its dissolution, *was a civil partnership* and not a mercantile firm because Vidal & Monagas was organized for agricultural purposes and it was engaged solely in farming (R. 489 mid.). So, there can be no doubt that, since such dissolution, the partnership property was owned in common and undividedly by the partners. *The accepted rule and undeviat-*

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[15] An appeal taken by Vidal's heirs (respondent and his mother) in No. 783 was dismissed by the Puerto Rican supreme court in 1942 (60 PRR 763). But they did not seek further review by the Court of Appeals. Hence, the binding effect of prior judgment in No. 783, as res judicata, is additionally reinforced by the self-evident fact that respondent forewent his right to have higher courts, the Court of Appeals and this Court, enable him to win his case by holding that he was right and that the Mayaguez district court was wrong in said action No. 783. *"If a litigant chooses not to continue to assert his rights after an intermediate tribunal has decided against him, he has concluded his litigation as effectively as though he had proceeded through the highest tribunal available to him". Angel* v. *Bullington* (1947), 91 L. ed. at page 837, col. 1 mid., 330 U. S. at page 189, cited and followed on this point by the insular supreme court in *González Padín Co., Inc.* v. *Tax Court of Puerto Rico* (1947), 67 DPR 222, and at page 228 (Spanish edition).

ing practice in Puerto Rico is that "upon dissolution of a civil partnership, the partnership property is owned in common and undividedly by the partners." Chardón v. *Laffaye,* 43 PRR 623 bot., 627 mid., citing a decision of the supreme court of Spain dated August 3, 1892; *Chardón* v. *Laffaye,* 46 PRR at page 890 mid.; *Miramar Realty Co.* v. *Registrar,* 44 PRR at p. 811 bot. Respondent has also granted (his main br., p. 27, note 25 before the Court of Appeals) that *the status of a dissolved civil partnership* in Puerto Rico is "*that of a community of property* [tenancy in common] *and not that of a partnership in liquidation.*"[16] That is why an undivided hereditary share or interest in realty may be judicially *claimed or revendicated* in Puerto Rico. *Heirs of Rivera* v. *Manso,* 64 PRR 617, syll. 3, p. 619; *Cintrón* v. *Yabucoa Sugar Co.,* 42 PRR 668, 672 mid.; *Petrilli, et al.* v. *Pérez,* 35 PRR 712 bot., 714 mid. It all convincingly shows that prior case No. 783 was validly instituted *in 1938* (R. 285-305) by Vidal's heirs, in their attempt to revendicate, *though unsuccessfully,* an alleged proportionate share in Belvedere Estate. In these circumstances, even if it be granted for the sake of argument— "that all that was actually decided in No. 783 was that the cause of action set out therein had prescribed" (Opinion of Court of Appeals (Supp. R. 562 mid.)), it is patently obvious that earlier judgment (R. 314-350) in case No. 783 should be held fortified as *res judicata* in the instant cause, *since where a demurrer, as happened in No. 783, urges the statute of limitations and is sustained and followed by judgment, such judgment*

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[16] It is thus manifest that the case of *Rosaly* v. *Graham* (1910), 16 PRR 156, cited by the insular supreme court (R. 483 mid.), is plainly inapposite. The *Rosaly case only concerns a mercantile firm* where, even on dissolution, its assets are not owned in common by the individual members, *as occurs in case of plain civil partnerships,* like Vidal & Monagas. In the *Rosaly case* an undivided share claimed in ejectment had been contributed *to a mercantile firm,* whose liquidation was not even averred.

likewise constitutes a decision on the merits and is res judicata. Liken v. *Shaffer,* 64 F. Supp. 435, syll. 56, p. 445, affd. on such gr. 141 F. 2d 877, syll. 12, cert. den. sub. nom. *Wilson* v. *Shaffer,* 89 L. ed. 605. See also cases in footnote 18, *infra.*

It should be recalled, however, that in No. 783 everything concerning the alleged partnership Monagas & Vidal was set out (R. 296 bot.) and respondent, as co-plaintiff in that case, with full knowledge of his means of redress, after reciting that the Belvedere lands had belonged to the said firm and that upon the decease of his father Ramiro Vidal, he became entitled to a one-third share therein, demanded judgment for the restitution of that undivided interest and *for a liquidation and settlement* between the Monagas and the then plaintiffs, including mesne profits, etc. (R. 304 top). *It is unquestionable, therefore, that a liquidation of all affairs between the parties to No. 783, was there sought, in addition to revendication of realty and the annulment of proceedings in No. 6889 and of the judgment in No. 10,416* (See Court of Appeals' opinion, Supp. R. 560).[17]

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[17] However, any contention that the "perfect identity" named in Section 1204 of the Puerto Rican Civil Code, ed. 1930 (§ 1252, Spanish Civil Code) is not the "substantial identity" of actions and parties required in American jurisdictions, would be wholly unwarranted. It should be again noted that this Court has expressly indicated that *the res judicata doctrine is substantially the same in Puerto Rico as in other American jurisdictions. Calaf* v. *Calaf,* 58 L. ed. at p. 645, col. 1 mid. *Manresa,* the renowned Spanish commentator, says (Vol. 8, ed. 1907, p. 583 mid.) that we must "fix our attention on pronouncements of the most recent jurisprudence which, out of due precaution against litigants in bad faith and considering the practical purpose of putting an end to litigations, *has interpreted rather liberally the* [res judicata] concurrent requirements demanded by the Code." *Vazquez* v. *Santos, etc.,* 54 PRR 587, syll. 2, holds that "the fact that the basis of petitioning varies with the suits will not prevent the defense of res judicata from

(*Continued on following page*)

B. The judgment in the present case is out of harmony with the guiding *res judicata* rule, as set up for Puerto Rico in *Calaf* v. *Calaf*, 232 U. S. 371, 374, 58 L. ed. 642, which is decisive as to conclusiveness of judgment in former suit No. 783.

Petitioners have presented a meritorious, just and unshakable demonstration that prior action No. 783 and the present case involve the same causes, transaction and object, as the two actions comprise slightly different means to attain the same object; and that the difference, if any, between *Calaf* v. *Calaf, supra* (232 U. S. 374, 58 L. ed. 645), decided by this federal Supreme Court in a case coming precisely from Puerto Rico, and suit No. 783 in relation to the instant cause, would simply be arithmetical. In the *Calaf* case plaintiff claimed ½ of the estate left by his father. In No. 783, as well as in the present case, appellee's attempt, *as heir of deceased partner Ramiro Vidal Martínez,* is to reach a ⅓ interest in Belvedere estate which, since 1924, *is the only asset involved* to which the record refers, as also found by the Puerto Rico supreme court (R. 483 top).

The Court of Appeals characterizes as "the more difficult question" the "effect upon the instant litigation of the judgment entered in case No. 783" (Supp. R. 559). Then, that Court states petitioners' cogent contention, among others, that "although the action in No. 783 may have differed in form from the one in the case at bar, *nevertheless the same result was sought, i. e.,* the liquidation of the assets of the dissolved partnership Monagas &

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prevailing". And in the *Insular Board of Elections case* (63 PRR at p. 799 mid.), it is plainly stated that once a judgment denying a mandamus is entered, petitioners "may not afterwards file * * * the same petition *or another substantially the same* [u otra *sustancialmente igual*] * * *. Because they would be barred by the defense of *res judicata* * * *." It all shows that the *"substantial identity"* prevails both in Puerto Rico and American jurisdictions, upon a liberal and reasonable construction of § 1204 of the *Civil Code*, ed. 1930.

Vidal and distribution of one-third thereof to the plaintiff as his father's heir. Therefore [petitioners] say, citing *Calaf* v. *Calaf*, 232 U. S. 371, 374, *'the present case is simply a different means to reach the same result'* as that sought in the earlier litigation, and hence they contend that the judgment in the earlier case is conclusive in this one." And the Court of Appeals expressly concedes that—

> *"It is hard to see any substantial difference between the case at bar and Calaf* v. *Calaf, supra, upon which the appellants heavily rely,* for in that case it was held by the Supreme Court of Puerto Rico, and on direct appeal the Supreme Court of the United States affirmed, that a *dismissal on demurrer without leave to amend*[18] of a suit brought by the plaintiffs against the defendant to recover one-half of a decedent's estate *precluded a subsequent suit by the same plaintiffs* seeking to have the institution of the defendant as the decedent's heir declared void and the intestate succession of the decedent opened, whereby the plaintiffs would become entitled to one-half the estate—*the Supreme Court of the United States saying* (232 U. S. 374 [58 L. ed. 645] *'these differing allegations are simply different means to reach the same result'*" (Supp. R. 560 bot.).

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[18] In Puerto Rico it is also a well-established rule that "where a court in rendering judgment sustaining a demurrer for *insufficiency of* the *complaint,* does not grant leave to amend, such judgment is a bar to another action between the same parties and upon the same facts". *Aguilera* v. *Pérez* (1937), 51 PRR 1, syll. 2, p. 4; *Laloma* v. *Fernández,* 61 PRR 550, and at page 551 bot. Such is the accepted federal rule in the United States. *Angel* v. *Bullington,* 91 L. ed. 833, syll. 9; *Heiser* v. *Woodruff,* 90 L. ed. 971, col. 2 mid.; *Northern P. R. Co.* v. *Slaght,* 51 L. ed. 738, 741; *Bliss* v. *Bliss,* 81 F. 2d 411, syll. 2, p. 412, cert. den. 80 L. ed. 1001; *American Bakeries Co.* v. *Vining,* 80 F. 2d 932, syll. 1. See also *Liken* v. *Shaffer,* 64 F. Supp. 435, syll. 56, p. 445, affd. on such gr. 141 F. 2d 877, syll. 12, cert. den. sub. nom. *Wilson* v. *Shaffer,* 89 L. ed. 605 (judgment on demurrer sustaining defense of *statute of limitations* is on merits and is res judicata).

The well settled rule in Puerto Rico, as repeatedly upheld by the insular supreme court, is that *"one cannot test out different lines of defense against the same cause of action by means of different suits"*, and that *the public policy* behind the doctrine *of res judicata requires* parties to marshal all the available facts and law and to present them to the court in one suit. *Laloma* v. *Fernández,* 61 PRR at page 553 mid.; *Vázquez* v. *Santos,* 54 PRR at page 593; *Carrión* v. *Lawton,* 44 PRR 448, syll. 1; *Manrique* v. *Aguayo, et al.,* 37 PRR at pages 320 mid.—321; *Ninlliat* v. *Suriñach,* 27 PRR 69 (the mere fact that the present suit is brought on a different theory amounting to a new cause of action would not alter the situation).

This Hon. Supreme Court of the United States has ruled on such point in the same way, precisely in *Calaf* v. *Calaf, supra,* a case hailing from Puerto Rico. *Calaf* v. *Calaf* (Holmes, J.), 58 L. ed. 645, 232 U. S. 374; *Northern P. R. Co.* v. *Slaght* (1907), 51 L. ed. at page 741, col. 2 bot., 205 U. S. at page 132; *United States* v. *California & O. Land Co.* (Holmes, J.), 48 L. ed. 476, and at page 479, col. 1 mid., *followed by the insular supreme court in Laloma* v. *Fernández, supra.* In said *California & O. Land Co., supra,* the United States Supreme Court by Justice Holmes stated: *"Now it seeks the same conclusion by a different means * * * in this as in the former suit it seeks to establish its own title to the fee * * * But the whole tendency of our decisions is to require a plaintiff to try his whole cause of action and his whole case at one time. He cannot split up his claim * * * and, a fortiori, he cannot divide the grounds of recovery."*[19]

[19] In a citation heretofore made by respondent, it is also reiterated that: "The application of the doctrine of res judicata to identical causes of action does not depend upon the identity or differences in the forms of the two actions. A judgment upon the merits bars a subsequent suit upon the same cause, *though brought in a different form of action, and a party therefore cannot, by varying the form of action or adopting a different method of presenting his case, escape the operation of the principle that one and the same cause of action shall not be twice litigated.*" *American Jurisprudence,* Vol. 30, § 175, at page 919.

If the Opinion of the Court of Appeals (Supp. R. 560 bot.) frankly concedes that *"it is hard to see any substantial difference between the case at bar and Calaf* v. *Calaf, supra, upon which the appellants heavily rely"*, it is patently clear that the judgment of the insular supreme court in the instant litigation, as now affirmed, *should be held to be obviously and inescapably wrong, since it is manifestly and demonstrably inconsistent with the law and decisions in Puerto Rico and in the United States, to the effect that a judgment like that rendered in prior suit No. 783, is an absolute bar to a second attempt to reach the same result by a different medium or method.* And even the local Supreme Court recognizes that it is an unavoidable judicial duty to follow applicable rulings established by this highest court of the Nation. *Del Rosario, et al.* v. *Rucabado, et al.*, 23 PRR 438, syll. 1.

III. In not holding that Juan A. Monagas, petitioners' ancestor, had acquired title by adverse possession, as held between the same parties in prior Case No. 783, the judgment under review is manifestly irreconcilable with deeply rooted principles and well-settled local law.

Juan A. Monagas, petitioners' predecessor, was in open and uninterrupted possession, as owner, of Vidal and his heirs' (respondent and his mother) alleged interest in Belvedere farm since he bought from Beauchamp in 1923, under a recorded deed (R. 256-260, Exhibit 6), which is in Puerto Rico a good or just title.

It is also unquestionable that such possession has been repeatedly confirmed, judicially, in favor of the Monagas family, petitioners herein, thru proceedings Nos. 6889, 10,416 and 783, hereinbefore considered. Judgment in No. 10,416 even imposed the condition of discharging a $20,000 mortgage-lien to relieve Vidal's heirs of all liability, and Juan A. Monagas duly fulfilled said condition. The good faith of a possessor is not only always presumed in Puerto

Rico, but in the case at bar it has been actually recognized and established by the very fact of the aforesaid three earlier judgments in Monagas' behalf. Judgment in No. 783, which went against respondent here, in part held that deceased co-appellant below, Juan A. Monagas, *had acquired title to Vidal's share in Belvedere farm by adverse possession for more than 10 years* (R. 342 mid.—349 mid.), *since the complaint in No. 783 did "not overcome the presumption of just title claimed by Monagas, inasmuch as the irregularities * * * alleged * * * were not sufficient to destroy this presumption."* The former judgment in No. 783, along with cases 6889 and 10,416, most obviously bar this subsequent suit to attain the same object "though brought in a different form", as the law emphatically forbids it (see II, sub. div. B, *ante*).

The above uncontroverted factual sketch involved in the defense of adverse possession urged by petitioners in the present case (R. 112 mid., 115 bot., 116 top, 140 bot.), undeniably shows that the judgment of the supreme court of Puerto Rico, as affirmed by the Court of Appeals, *is manifestly irreconcilable with local law and the following well-established principles and precedents:*

A. That Beauchamp's conveyance to Monagas since 1923, as later judicially confirmed, was and is sufficient to transfer ownership and is a *just title* within *Section 1852, Civil Code of Puerto Rico,* under the insular adverse possession doctrine. *Picart* v. *De León,* 22 PRR 553; *Teillard* v. *Teillard,* 18 PRR 546, syll. 3; *Martorell* v. *Ochoa,* 25 PRR 707, syll. 1, 3; *Mateo* v. *Mateo,* 28 PRR 461; *Heirs of Gutierrez* v. *Pons et al.,* 32 PRR 639, syll. 1; *Delgado* v. *Encarnación,* 35 PRR 273, syll. 3, page 276 top; *Heirs of Juarbe* v. *Amador,* 42 PRR 355, 359 mid.; *Calderón* v. *Sociedad Auxilio Mutuo,* 42 PRR 400, 407 mid.; *Annoni* v. *Nadal,* 50 PRR 499, syll. 7, 503 bot.; *Annoni* v. *Heirs of Nadal,* 59 PRR 638, syll. 4 (affd. *Annoni* v. *Nadal's Heirs,* 135 F. 2d 499); *People of Porto Rico* v. *Fortuna Estates,* 279 Fed. 500; *People* v. *Livingston,* 47 F. 2d 712, 717, col.

2; *Díaz* v. *Pérez,* 54 F. 2d 588, 593, col. 2; *Baldrich* v. *Barbour,* 90 F. 2d 868, 871.

B. That a *just title does not mean a perfect title,* as otherwise prescription would not be needed. *Fernández & Bros.* v. *Ayllón y Ojeda,* 69 L. ed. 211, 266 U. S. 144; *Heirs of Juarbe* v. *Amador,* 42 PRR 355, syll. 2; *Martorell* v. *Ochoa,* 25 PRR 707, syll. 3 (a possessor need not have a perfect title in order to hold in good faith).

C. That possession in *good faith* under a just title *is presumed* (*Civil Code, ed. 1930,* § 377; see Appdx. A); and good faith is always presumed, and any person averring bad faith on the part of a possessor, is bound to prove the same (*Civil Code, ed. 1930,* § 364, 1850, Appdx. A; *Nuñez et al.* v. *Heirs of Rivera,* 19 PRR 736, syll. 1).

D. And that Monagas, *"having received his title by judicial proceedings • • • acquired a 'just' or 'proper title' thereto, and he and his heirs, after ten years of uninterrupted and open possession, acquired dominion title."* This is the express wording and apposite decision in *People of Porto Rico* v. *Livingston* (CCA 1), 47 F. 2d 712, 717, col. 2; see also *United States* v. *Fullard-Leo,* 331 U. S. 256, 91 L. ed. 1475.

From the date of the deed of sale and acquisition by Monagas (17 May 1923, R. 249 bot.) to the initiation of the instant cause (November 16, 1942, R. 2 mid.), obviously more than 10, and even more than 19 years of adverse possession by Monagas had transpired (*Civil Code,* ed. 1930, § 1857; see Appdx. A).

WHEREFORE, in view of the substance, importance and gravity of the questions presented, it is respectfully prayed that a writ of certiorari herein be granted.

December 13th, 1948.

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Appendix "A"

Provisions of the Civil Code of Puerto Rico, ed. 1930:

"*Section 153.*—The father and the mother have, with respect to their children not emancipated: 1. The duty of supporting them, keeping them in their company, educating and instructing them in accordance with their means, and representing them in the exercise of all actions which may redound to the benefit of such children. * * *"

"*Section 159.*—The exercise of the *patria potestas* does not authorize the father or the mother to alienate or lay any encumbrance upon real property of any class whatever, or upon personal property, the value of which exceeds five hundred dollars, pertaining to the child and which may be under the administration of its parents, without the previous authorization of the district court wherein the property is situated and the demonstration of the necessity and utility of the alienation or encumbrance and in accordance with the provisions of the law relative to special legal proceedings. * * *"

"*Section 212.*—The tutor shall require the authorization of the proper district court: * * * 5. To alienate or encumber the real property which constitutes the capital of the minor or incapacitated person or to make contracts or execute acts requiring recording; also to alienate personal property, the value of which exceeds two hundred dollars, and to execute lease contracts for a longer period than six years; but in no case shall the contract be entered into nor the authorization granted for a period of time in excess of that required by the minor to become of age."

"*Section 364.*—Good faith is always presumed, and any person averring bad faith on the part of a possessor, is bound to prove the same."

Appendix "A"

"*Section 377.*—The possessor who believes himself owner has in his favor the legal presumption that he possesses under a just title and he cannot be compelled to show the same."

"*Section 1204.*—* * * Only a judgment obtained in a suit for revision (*i. e.,* direct appeal) shall be effective against the presumption of the truth of the *res adjudicata.* In order that the presumption of the *res judicata* may be valid in another suit, it is necessary that, between the case decided by the sentence and that in which the same is invoked, there be the most perfect identity between the things, causes, and persons of the litigants, and their capacity as such. It is understood that there is identity of persons whenever the litigants of the second suit are legal representatives of those who litigated in the preceding suit, or when they are jointly bound with them or by the relations established by the indivisibility of prestations among those having a right to demand them, or the obligation to satisfy the same."

"*Section 1850.*—Good faith of the possessor consists in his belief that the person from whom he received the thing was the owner of the same, and could convey his title."

"*Section 1852.*—By a proper title is understood that which legally suffices to transfer the ownership or property right, the prescription of which is in question."

"*Section 1857.*—Ownership and other property rights in real property shall prescribe by possession for ten years as to persons present, and for twenty years with regard to those absent, with good faith and proper title."

Appendix "B"

Provisions of the Puerto Rico Code of Civil Procedure, 1933 edition:

"*Section 56.*—When an infant or an insane or incompetent person is a party, he must appear either by his general guardian or by a guardian ad litem appointed by the court in which the action is pending, in each case, or by a judge thereof. * * *"

"*Section 118.*—Every pleading must be subscribed by the party or his attorney; and when the complaint is verified * * * the answer must be verified. * * * In all cases of a verification of a pleading, the affidavit of the party must state that the same is true of his own knowledge, except as to the matters which are therein stated to be on his information or belief, and as to those matters, that he believes it to be true; and where a pleading is verified, it must be by the affidavit of a party. * * *"

"*Section 132.*—Every material allegation of the complaint, not controverted by the answer, must, for the purposes of the action, be taken as true. * * *"

"*Section 313.*—The defendant in any action may, at any time before the trial or judgment, serve upon the plaintiff an offer to allow judgment to be taken against him for the sum or property, or to the effect therein specified. If the plaintiff accepts the offer, and give notice of acceptance, the secretary must thereupon enter judgment accordingly. If the notice of acceptance be not given, the offer is to be deemed withdrawn, and cannot be given in evidence on the trial; and if the plaintiff fail to obtain a more favorable judgment, he cannot recover costs accruing subsequently to the offer, but must pay the defendant's cost from the time of the offer."

Appendix "C"

Puerto Rico Rules of Civil Procedure, No. 17, subdiv. (f), 60 PRR, Appdx., p. 16 bot.

"(f) *Infants, Etc., to Appear by Guardian.—When an infant* or an insane or incompetent person *is a party, he must appear by his father or mother with patria potestas,* if living, and *in default thereof,* by his general guardian, or by a guardian *ad litem* appointed by the court in which the action is pending, or by a judge thereof, in each case. A guardian *ad litem* may be appointed in any case, when it is deemed by the court taking cognizance of the matter, or by a judge thereof, that the infant, insane or incompetent person be represented by such guardian *ad litem,* notwithstanding he may have a general guardian and may have appeared by him."